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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

LEE K. NGUYEN et al.,

Plaintiffs and Respondents,

v.

TIM DO,

Defendant and Appellant.

C081158

(Super. Ct. No. 34-2015-
00182116-CU-DF-GDS)

In this anti-SLAPP case (see Code Civ. Proc., § 425.16),¹ the trial court ruled that there was no public interest in statements alleged to be libelous, finding that they arose from an internal governance dispute within a local community non-profit entity. Defendant Tim Do timely appealed. The appeal lies. (*Id.*, subd. (i).)

¹ Further undesignated statutory references are to the Code of Civil Procedure.

Because defendant did not produce evidence showing that the alleged libels were made in connection with a matter of public interest, we affirm the order denying the motion to strike.

BACKGROUND

The relevant facts in this appeal are those found in the pleadings and moving papers on which the trial court based its ruling.

The Complaint

The complaint pleads one cause of action for libel, but alleges several defamatory statements were made in different issues of a local weekly foreign language magazine. There are no translations of the articles in the record.²

Plaintiffs Lee K. and Harvey Nguyen, Trung Q. Lam, Kenny N. Huynh, Crisan C. Kim, and Celeste Brown sued defendants Tim Do (aka Do Thien Thinh), Chau Truong (aka Chau Ngoc Thuy or “CNT”), and Hai Van News & Services (Hai Van). (CT 1)

The complaint alleges the Vietnamese American Community of Sacramento, Inc. (VACOS) is a public benefit (26 U.S.C. § 501(c)(3)) corporation. CNT was the owner and publisher of Hai Van, a weekly news magazine. VACOS was first formed by Do and others as a limited liability company in 2006 “to serve the Vietnamese American community of Sacramento.” In 2007 Do was elected president. In 2009 Do asked plaintiff Harvey Nguyen to help plan a community center which Do would fund. Harvey Nguyen did so, and the grand opening was in 2013. Towards the end of 2013, new board members led VACOS to become a 501(c)(3) corporation.

The VACOS bylaws called for a general election by VACOS members for a board chair, who was empowered to choose other officers. But in December 2014, Do “ran a

² Normally each allegedly defamatory statement gives rise to a separate cause of action, or “count” even if each is based on the same legal theory of libel. (Cf., e.g., *Shively v. Bozanich* (2003) 31 Cal.4th 1230, 1238 -1239.)

general election for VACOS president, open to the public, including non-members.” Lee Nguyen was elected president and he appointed the other plaintiffs to various unpaid volunteer positions within VACOS. After the election, plaintiffs pushed to revise the bylaws to provide for the general election of officers, transparency for “books and accounts,” and to preclude Do from treating VACOS like a private company. On information and belief plaintiffs alleged Do had thought obtaining 501(c)(3) status would allow him to avoid personal taxes, and plaintiffs directly alleged Do said he did not realize he had to keep VACOS assets separate from his own.

Do then started a campaign to oust plaintiffs. He demanded that they apply for VACOS membership, then terminated them. This campaign included a series of false and defamatory articles written by defendant CNT and published in Hai Van, a weekly magazine distributed in the Vietnamese community and posted on the Internet. The six articles (all published in 2015) were as follows:

(1) A March 25 article stated plaintiffs “plotted an illegal election” contrary to the bylaws, that Harvey Nguyen took \$60,000 from Do and his wife, and that Kim and Brown and their husbands embezzled VACOS funds and should be prosecuted.

(2) An April 1 article stated Lee Nguyen’s “credential as a doctor of business administration” was fake and Harvey Nguyen and others used VACOS money “to party and to steal from” Do.

(3) An April 8 article described plaintiffs as a “gang” who conspired to take over VACOS rather than serve the community, that Lee Nguyen belonged to a pro-communist organization, and that supporting plaintiffs “means turning VACOS over to communists to ruin it and steal all VACOS funds.”

(4) An April 15 article published plaintiffs’ demand for retraction of the first two articles, thereby republishing the statements made therein.

(5) An April 22 article stated Do had meant to pressure the “gang” of plaintiffs “not to reject the Miss Sacramento pageant,” but then decided they wanted “the Viet Tan

political party to invade VACOS” so Lee Nguyen could seize its bank account, that they had been reported to the police, and that they should resign from VACOS.

(6) An April 29 article stated Lee and Harvey Nguyen “brought outsiders to corrupt and take over” VACOS and should be dismissed, that Lee Nguyen was a “low life,” that all plaintiffs were untrustworthy and were conspiring to corruptly and illegally take over VACOS, that involvement by some plaintiffs in management of the community center “meant there would be fraud,” and that plaintiffs had defrauded VACOS.

A subsequent article stated Do had asked CNT not to write further articles, and thereafter plaintiffs unsuccessfully demanded a full retraction.

Answer

Tim Do answered with a general denial, and raised 33 boilerplate defenses, including that this was a SLAPP suit. CNT and Hai Van defaulted.

The Motion to Strike

In relevant part, Do’s motion to strike contended this suit targeted statements made in a public forum in connection with a matter of public interest, that is, “the recent election/appointment of Plaintiffs to officer positions in the community organization, VACOS, and ongoing related to their leadership.”³

The motion relied heavily on Do’s declaration that described VACOS and the underlying dispute. Do’s declaration incorporated a purported copy of the VACOS bylaws, but they are not in English and are without accompanying English translation. Do declared that he founded VACOS and was the president of the Board of Directors, one of three VACOS boards; the other two are the Advisory Board and the Executive Board. Do received no compensation. VACOS rents space in the Vietnamese

³ The motion also contended plaintiffs could not establish a probability of prevailing, in part because Do had nothing to do with the Hai Van articles, but the trial court did not reach these issues and we do not address them.

Community Center (evidently the one Do helped build) and serves the Sacramento-area Vietnamese community (allegedly some 40,000 strong) by supporting various charitable endeavors. In particular this includes the Tet festival (allegedly attended by about 25,000 people each year), which in turn includes the Miss Ao Dai beauty pageant.

Do claimed the December 2014 election of Lee Nguyen as VACOS president was irregular because the election was open to the public contrary to the bylaws and past practices limiting voting to VACOS members. Lee Nguyen's election was never "confirmed" and he did not file a required application for VACOS membership. Do denied any involvement in Hai Van articles, but alleged "some of their content may be true," and described alleged wrongdoings by various plaintiffs.

The motion argued that the alleged wrongful statements were made in connection with an issue of public interest because of the size of the Sacramento-area Vietnamese community and its interest in the governance of VACOS. By seeking election or appointment to a VACOS board, plaintiffs "opened up their character, conduct, and fitness to be issues of public interest," and they were involved in an ongoing controversy over the validity of the public election.

The Opposition

In opposition, plaintiffs tendered the declarations of Lee Nguyen, Brown, and Kim. However, the trial court sustained all but six of Do's 50 objections to these declarations. Because those evidentiary rulings are not challenged on appeal, we disregard all evidence excluded by the trial court. This makes the opposition statement of fact in the trial court (utterly bereft of citations) hard to follow.⁴

⁴ Plaintiffs' brief on appeal cites only to Nguyen's declaration, including passages that were excluded by the trial court. Counsel presumably knew what evidence had been excluded when he wrote the brief, especially since Do's opening brief referenced the rulings on the objections. Yet counsel failed in his duty to give this court an accurate statement of facts.

The admissible portions of the opposition declarations do not add much of interest to this appeal. Lee Nguyen declared he had known about VACOS for many years. After the December 2014 public election held at Do's direction, Nguyen was elected president, and he then appointed the other plaintiffs to volunteer positions; later he learned the VACOS bylaws limited voting to members. Do told Nguyen he did not know he had to keep his personal assets separate from VACOS assets or that the tax exempt status for VACOS did not help Do personally. When Nguyen wrote a letter calling for greater transparency in VACOS, Do demanded that he and his appointees apply for VACOS membership, but they did not do so. Brown declared that in 2013 she was asked to become the VACOS corporate secretary. Brown did not apply for membership. Kim declared that in February 2013 Do appointed her to be the VACOS treasurer, but she had no access to the bank account. Kim did not apply for membership. In May 2013 Kim accepted a nomination to be the VACOS treasurer. Do opened a new bank account adding her as a signer. After a VACOS event she reimbursed volunteers for expenses, but Do was upset about this. Kim resigned in April 2015.

Plaintiffs conceded that Hai Van--which their counsel characterized without supporting evidence as "a local advertising handout distributed free"--was a public forum, but contended the libels were not connected to any issue of public interest. Plaintiffs argued that VACOS was a private corporation controlled by Do, that it had no members (another claim unsupported by evidence), and that it was of no real interest to anyone else.⁵

⁵ Before their opposition was filed, plaintiffs sought judicial notice of a stipulated order by the Fair Political Practices Commission (FPPC) finding Do made an illegal campaign contribution. The trial court granted their unopposed request. However, the FPPC order has no clear relevance to this case, and appears to have been meant as an *ad hominem* attack on Do, as Do's reply suggested. We describe it no further.

The Reply

In reply, Do argued plaintiffs presented no evidence to negate that they “thrust themselves into issue of public interest to the Vietnamese community by undertaking to govern, criticize, and reform VACOS.” He argued plaintiffs were involved in an ongoing controversy over the election, and had not negated Do’s showing that VACOS “is a community service organization that serves the Vietnamese community of Sacramento, such that its governance would be of interest to those served.”⁶

The Hearing

At the hearing, Do’s counsel emphasized the public election for VACOS, showing more than a private disagreement between corporate directors. The articles came out “immediately after the public election but before the plaintiffs were confirmed officially,” and the “crux of the articles was directed at those exact controversies themselves that question the validity of the election. It called them outsiders, illegal election” The trial court replied that it could not read the articles absent a translation, and questioned how it could grant the motion in such circumstances. Referencing Do’s declaration that attached the VACOS bylaws, the court pointed out in part: “It could be a weather report. I don’t know. That is hearsay.” The court stated it read the complaint as dealing with the internal operations of VACOS, not the election. Do’s counsel pointed to other parts of Do’s declaration, to try to show the broad cultural importance of VACOS in the Sacramento area, and by extension the public importance of its leadership. The court replied that even major corporations are of public interest to shareholders and are

⁶ Do sought judicial notice of newspaper articles and Internet postings discussing Do’s role in the community, the community center, the Tet festival (past or upcoming), or the Little Saigon section of Sacramento. The trial court granted the motion as to the existence of the material but not as to their contents. Do did not claim any of these items or any other media outlet referenced the instant dispute, and in his request gave no explanation of the relevance of any of these items.

discussed in the media, but questioned whether that made their internal workings a matter of public interest under the anti-SLAPP statute. Plaintiffs' counsel argued that the election had been in December 2014, well before the March and April 2015 articles. By then plaintiffs "had already resigned, so it's all after the fact. This is garden variety false allegation of criminal conduct published in a public newspaper."

The trial court confirmed a tentative ruling against Do.

The Ruling

Relying in part on *D.C. v. R.R.* (2010) 182 Cal.App.4th 1190 (*D.C.*) and *Donovan v. Dan Murphy Foundation* (2012) 204 Cal.App.4th 1500 (*Donovan*), the trial court described each of the articles, and found none were of sufficient public interest to be protected by the anti-SLAPP statute.⁷ Do timely appealed.

DISCUSSION

I

Legal Burdens and Standard of Review

We have summarized the relevant burdens and standard of review as follows:

“ ‘Code of Civil Procedure section 425.16 was enacted in 1992 to dismiss at an early stage nonmeritorious litigation meant to chill the valid exercise of the constitutional rights of freedom of speech and petition in connection with a public issue. [Citation.] These meritless suits, referred to under the acronym SLAPP, . . . are subject to a special motion to strike unless the person asserting that cause of action establishes by pleading and affidavit a probability that he or she will prevail.’ ”

“ ‘ “If the defendant establishes a prima facie case, then the burden shifts to the plaintiff to establish ‘ “a probability that the plaintiff will prevail on the claim,” ’ i.e., ‘make a prima facie showing of facts which would, if proved at trial, support a judgment in plaintiff's favor.’ ” ’ [Citation.] ”

⁷ The trial court ruled that a few of the alleged libelous statements were not defamatory, but Do raises no issue about these rulings on appeal, so we disregard those statements.

“The trial court’s ruling on a section 425.16 motion is reviewed de novo. [Citation.]” (*Gilbert v. Sykes* (2007) 147 Cal.App.4th 13, 21-22.)

“A lawsuit qualifies for a special motion to strike under section 425.16 if it arises from an act ‘ “in furtherance of the person’s right of petition or free speech under the United States or California Constitution.” ’ [Citations.] The statute defines acts in furtherance of free speech or petition as including statements that are made (1) in a public forum and (2) in connection with an issue of public interest. [Citation.]” (*Gilbert v. Sykes, supra*, 147 Cal.App.4th at p. 22; see § 425.16, subd. (e).) Do, as the movant, bore the burden on this issue. (See *D.C., supra*, 182 Cal.App.4th at p. 1216; *Gallimore v. State Farm Fire & Casualty Ins. Co.* (2002) 102 Cal.App.4th 1388, 1397 (*Gallimore*).)

The statute (§ 425.16) refers to “matters of public significance” (*id.*, subd. (a)) and statements made “in connection with an issue of public interest” (*id.*, subd. (e)(3)). Although outlier examples on either end of the spectrum may be obvious, the precise line between matters of sufficient public interest and matters falling short has not been clearly limned. (See, e.g., *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1122, fn. 9 [judges and attorneys “ ‘ “will, or should, know a public concern when they see it” ’ ”]; *D.C., supra*, 182 Cal.App.4th at pp. 1214-1215; *Terry v. Davis Community Church* (2005) 131 Cal.App.4th 1534, 1546 (*Terry*) [the statute “ ‘ does not provide a definition for “an issue of public interest,” and it is doubtful an all-encompassing definition could be provided’ ”].)

In *Terry* we quoted one of earlier cases outlining some factors to consider:

“ ‘First, “public interest” does not equate with mere curiosity. [Citations.] Second, a matter of public interest should be something of concern to a substantial number of people. [Citation.] Thus, a matter of concern to the speaker and a relatively small, specific audience is not a matter of public interest. [Citation.] Third, there should be some degree of closeness between the challenged statements and the asserted public interest [citation]; the assertion of a broad and amorphous public interest is not sufficient [citation]. Fourth, the focus of the speaker’s conduct should be the public interest rather than a mere effort “to gather ammunition for another round of [private] controversy” [Citation.] Finally,

“those charged with defamation cannot, by their own conduct, create their own defense by making the claimant a public figure.” [Citation.] A person cannot turn otherwise private information into a matter of public interest simply by communicating it to a large number of people. [Citations.]’ [Citation.] [In a prior case we] rejected the plaintiff’s argument that an accusation of criminal activity is always a matter of public interest, because the defendant had “not taken action intended to result in a criminal investigation” [Citation.]” (*Terry, supra*, 131 Cal.App.4th at pp. 1546-1547, partly quoting *Weinberg v. Feisel* (2003) 110 Cal.App.4th 1122 (*Weinberg*).)

We will consider Do’s appeal in light of these legal rules.

II

No Public Interest is Shown by the Evidence

Generally, in seeking reversal of the order denying his motion to strike, Do characterizes VACOS as a “core” community organization serving the Sacramento area’s large Vietnamese population, and therefore argues its internal affairs (such as the challenged election) necessarily impacts a broad segment of society.

We accept Do’s point that the Sacramento area has a large and vibrant ethnic Vietnamese community and that its annual Tet festival is well attended. We agree with the many cases Do summarizes in his briefs that hold a “public interest” can be shown if an issue is the subject of ongoing debate or controversy within a definable subgroup of society or private organization, such as a homeowners’ association, labor union, or even the “cat breeding community.” (*Traditional Cat Assn. Inc. v. Gilbreath* (2004) 118 Cal.App.4th 392, 397; see *Colyear v. Rolling Hills Community Assn. of Rancho Palos Verdes* (2017) 9 Cal.App.5th 119, 132 [there was an “ongoing controversy, dispute, or discussion regarding the applicability of tree-trimming covenants to lots not expressly burdened by them, and the [homeowners’ association’s] authority to enforce” them]; *Grenier v. Taylor* (2015) 234 Cal.App.4th 471, 483 [church with 550 to 1,000 members was large enough for SLAPP purposes, where members contributed money and there were allegations of theft and misuse of church funds]; *Hailstone v. Martinez* (2008) 169 Cal.App.4th 728, 738 [union suspended Hailstone’s ability as its business agent, but he

remained on the board; his “alleged misappropriation of union funds was of interest . . . to a definable portion of the public, i.e., the more than 10,000 [union] members”]; *McGarry v. University of San Diego* (2007) 154 Cal.App.4th 97, 110 [university’s football coach’s firing was “a topic of widespread public interest”]; *Damon v. Ocean Hills Journalism Club* (2000) 85 Cal.App.4th 468, 479-480 [management and governance of large homeowners association].) Do cites several more cases making this same legal point that we need not summarize.

But these cases do not help Do because he did not produce *evidence* that the underlying dispute was ever a subject of controversy or debate within the Sacramento-area Vietnamese community. He only showed that defendant Hai Van is a weekly local Vietnamese publication that ran the very articles about the dispute alleged to be defamatory.

Do states (without record citation) that the dispute raised “issues deserving of exposure and discourse among the 40,000 persons of Vietnamese heritage who reside in Sacramento.” Perhaps the issues *deserved* public discourse, but Do produced no evidence the issues *were* a matter of public discourse. (See *Donovan, supra*, 204 Cal.App.4th at pp. 1508-1509 [“Respondents presented no evidence of widespread public interest in the financial oversight or governance of the Foundation. They submitted no news articles indicating that the public was interested in these issues, or even in the dispute among directors of the Foundation. Rather, respondents rely solely on the fact that the Foundation is one of the largest charitable organizations in Southern California, subject to public oversight by the Attorney General, and that it donates a substantial amount of money every year to persons and entities that affect millions of Southern Californians. None of these facts, standing alone or taken together, would transform a private disagreement among directors of the Foundation into a public issue or an issue of public interest”].) We cannot infer that the VACOS board was a hot topic of discussion outside or even inside the relevant community.

As one court explained, “in order to satisfy the public issue/issue of public interest requirement . . . in cases where the issue is not of interest to the public at large, but rather to a limited, but definable portion of the public (a private group, organization, or community), the constitutionally protected activity must, at a minimum, occur in the context of an ongoing controversy, dispute or discussion, such that it warrants protection by a statute that embodies the public policy of encouraging *participation* in matters of public significance.” (*Du Charme v. International Brotherhood of Electrical Workers* (2003) 110 Cal.App.4th 107, 119 (*Du Charme*).) Our Supreme Court recently weighed in on characterizing a matter of public interest, noting that: “The appellate courts . . . have derived some guiding principles that characterize a matter of public interest. We share the consensus view that ‘a matter of concern to the speaker and a relatively small, specific audience is not a matter of public interest,’ and that ‘[a] person cannot turn otherwise private information into a matter of public interest simply by communicating it to a large number of people.’ [Citations.]” (*Rand Resources, LLC v. City of Carson* (2019) 6 Cal.5th 610, 621.)

Do has not shown how the mere discussion of the dispute in the Hai Van articles would tend to encourage participation in VACOS to ensure its sound governance going forward. (See *Du Charme, supra*, 110 Cal.App.4th. at p. 118 [“in this case, the Local’s trustee posted on its Web site the information that Du Charme had been removed from office for financial mismanagement, a statement that was presumably of interest to the membership (else why post it at all?), but unconnected to any discussion, debate or controversy. Du Charme’s termination was a *fait accompli*; its propriety was no longer at issue. Members of the local were not being urged to take any position on the matter. In fact, *no* action on their part was called for or contemplated. To grant protection to mere informational statements, in this context, would in no way further the statute’s purpose of encouraging *participation* in matters of public significance”].) As in *Du Charme*, the removal of plaintiffs from office was also a *fait accompli*.

In short, we have no quarrel with Do's *legal* argument that in a given case the Vietnamese community in the Sacramento area could qualify as a large and well-defined enough group for purposes of "public interest" analysis under section 425.16 and governing precedents. But the rhetoric in Do's appellate briefing, mirroring his trial court papers, is no substitute for *evidence* showing the ongoing importance of any aspect of the underlying VACOS dispute within the Sacramento-area Vietnamese community.

As explained *ante*, Do, as the movant, bore the initial burden to show that the alleged defamation implicated a matter of public interest. (See *D.C.*, *supra*, 182 Cal.App.4th at p. 1216; *Gallimore*, *supra*, 102 Cal.App.4th at p. 1397.) And as we and other courts have explained, "the arguments of counsel in a motion are not a substitute for *evidence . . .*" (*Ponte v. County of Calaveras* (2017) 14 Cal.App.5th 551, 556; see *Calcor Space Facility, Inc. v. Superior Court* (1997) 53 Cal.App.4th 216, 224 ["factual evidence is supplied to the court by way of declarations. [Real Party in Interest] provided argument but no evidence" to support that party's position in a discovery dispute.]

Do contends: "The allegedly defamatory statements were made in connection with issues of public interest to the members of VACOS and (by extension) the broader Vietnamese community (particularly those who voted in the public election); namely, 1) the validity of that public election that purportedly placed Respondents in office, 2) Respondents' motives and intentions, and 3) their fitness to hold those positions." But Do provides no record citations to support this and similar claims about the alleged widespread interest in the underlying issues. The record shows neither how many people are involved with VACOS (as members, volunteers, or otherwise), nor how many people voted in the "public" election.

There is no evidence that any media outlet other than Hai Van covered the dispute. Do denied in his declaration that he had a hand in the articles, but because the complaint alleges they were part of a campaign by Do against plaintiffs, Do cannot use his denial to claim the articles were "independent" media reports. We reject the view that an author or

newspaper can be insulated from liability by printing many defamatory articles and then claiming that the sheer number of those articles--without consideration of how many people read them or cared about them--shows the issue is one of public interest. (See *Rivero v. American Federation of State, County and Municipal Employees, AFL-CIO* (2003) 105 Cal.App.4th 913, 926 (*Rivero*) [“If the mere publication of information in a union newsletter distributed to its numerous members were sufficient to make that information a matter of public interest, the public-issue limitation would be substantially eroded, thus seriously undercutting the obvious goal of the Legislature”].)

Nor do we agree with Do’s view that allegations of possibly criminal behavior within the articles make this a matter of public interest. First, plaintiffs were elected or appointed to a charitable corporation, not to a public office. (See *Donovan, supra*, 204 Cal.App.4th at p. 1507, fn. 3 [“Here, there is no suggestion the Board’s meetings were broadcast or open to the public. More important, a nonprofit charitable organization, such as the Foundation, is not a quasi-governmental entity”].) Thus, the allegations of “possibly criminal activity by a publicly elected official” fall flat. Second, an allegation of criminal activity does not automatically make a statement a matter of public interest. If it did, as we have explained in a prior case, “wrongful accusations of criminal conduct, which are among the most clear and egregious types of defamatory statements, automatically would be accorded the most stringent protections provided by law, without regard to the circumstances in which they were made.” (*Weinberg, supra*, 110 Cal.App.4th at p. 1136.)

Claims that a private corporation’s directors or volunteers embezzled money or could not be trusted because they had or might commit fraud do not without more make the reports matters of public interest. (See *Weinberg, supra*, 110 Cal.App.4th at p. 1135 [“The fact that defendant’s statements accuse plaintiff of criminal conduct make them defamatory on their face. (Civ. Code, §§ 45, 45a, 46.) It does not automatically make them a matter of public interest”]; *Rivero, supra*, 105 Cal.App.4th at pp. 916-918, 924-

925 [union local claimed plaintiff committed bribery, theft, and extortion; because he was merely a lower-level supervisor the matters were not of public interest].)

Do repeatedly points out that the trial court stated on the record that this was a close case and contends the court failed to apply the statute broadly as the statute itself requires, inferentially arguing that if this were truly a close case the court should have tipped the scales in Do's favor. We agree that the statute provides it is to be construed broadly (see § 425.16, subd. (a); see also *Seelig v. Infinity Broadcasting Corp.* (2002) 97 Cal.App.4th 798, 808 [the purpose of this provision is to encourage "vigorous public debate related to issues of public interest"]), and at least one court has held "in a close case . . . we believe it is better to err on the side of free speech." (*Gallagher v. Connell* (2004) 123 Cal.App.4th 1260, 1275.) But because we review the record de novo, the trial court's opinion on the closeness of the case cannot drive our de novo analysis of the evidence--or, as here, the lack of evidence--presented by Do.

There is simply no factual support for Do's claim that the statements were made in the course of an *ongoing* discussion, debate, or controversy within the Sacramento-area Vietnamese community. In particular we point out that Do does not contend any of the articles and Internet posts of which the trial court took judicial notice referenced the VACOS dispute. (Cf. *Church of Scientology v. Wollersheim* (1996) 42 Cal.App.4th 628, 651 [public interest in church activities in part because of media coverage], disapproved on another point by *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 68, fn. 5.) There is no evidence that anyone outside the parties ever even *talked* about the underlying dispute. Thus, Do did not carry his initial burden to produce evidence that the dispute was of interest to the local Vietnamese community.

Accordingly, we uphold the order denying the special motion to strike.

DISPOSITION

The judgment is affirmed. Defendant shall pay plaintiffs' costs on appeal. (See Cal. Rules of Court, rule 8.278(a)(1).)

/s/
Duarte, J.

We concur:

/s/
Hull, Acting P. J.

/s/
Butz, J.